

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ST. PAUL REINSURANCE COMPANY)  
LIMITED LONDON, )

Plaintiff(s), )

v. )

THE FORT MILLER GROUP, INC. )  
and BEECHE SYSTEMS )  
CORPORATION, )

Defendant(s). )  
\_\_\_\_\_ )

No. C05-1912 BZ

**ORDER DENYING MOTION TO  
INTERVENE**

Robison-Prezioso, Inc. (Robison) has moved to intervene in this insurance coverage dispute.<sup>1</sup> Plaintiff opposes intervention. Defendants have not taken a position.

None of the cases upon which Robison relies establishes that it has a protectable interest which may as a practical matter be impaired if it is not allowed to intervene. This

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<sup>1</sup> All parties have consented to the jurisdiction of a United States Magistrate Judge for all proceedings including entry of final judgment pursuant to 28 U.S.C. § 636(c).

1 is not a case in which the defendants have defaulted, leaving  
2 no one except an intervenor to defend against an insurer's  
3 efforts to eliminate coverage.<sup>2</sup> Nor is this a case where the  
4 defendants are defunct, bankrupt or in prison and there  
5 appears to be a real risk that absent insurance coverage,  
6 Robison will be unable to recover on a judgment.<sup>3</sup> Robison is  
7 suing defendants for \$12 million dollars in state court.  
8 Before St. Paul's "gap" insurance policy would come into  
9 play, Robison would have to obtain a judgment and then be  
10 unable to satisfy it from defendants or from defendants'  
11 other insurers. Unlike the individual defendants in most of  
12 the cases in which the intervenor relies, the defendants here  
13 appear to be substantial corporations, one of which,  
14 according to its website, has been in business for over 50  
15 years.

16 In its reply papers, Robison for the first time asserts  
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18 <sup>2</sup> See e.g. Security Ins. Co. of Hartford v.  
19 Schipporeit, Inc., 69 F.3d 1377 (7th Cir. 1995) (intervention  
20 permitted after defendant's default entered to avoid allowing  
21 insurer "to play the Washington Generals and get out of town  
22 with a quick win"); Truck Ins. Co., v. Superior Court, 60  
Cal.App.4th 342, 347-48 (1997) (intervention permitted to  
prevent insured's default from destroying insurer's right to  
pursue equitable contribution).

23 <sup>3</sup> See e.g. St. Paul Fire & Marine Ins. Co. v.  
24 Summit-Warren, 143 F.R.D. 129 (N.D. Ohio 1992) (defunct  
25 corporation); Teague v. Bakker, 931 F.2d 259, 260 (4th Cir.  
26 1991) (defendant insured in prison and with limited financial  
resources to satisfy \$129 million dollar judgment); Continental  
27 Ins. Co., v. Law Office of Thomas J. Walker, 171 F.R.D. 183,  
185 (D. Ma. 1997) (defendant's limited funds would prevent  
28 intervenors from satisfying judgment if policy rescinded); TIG  
Specialty Ins. Co., v. Financial Web.com, Inc., 208 F.R.D. 336,  
338 (M.D. Fla. 2002) (intervenor's sole means of recovery was  
insurance policy plaintiff sought to rescind).

1 that it might not be able to recover on a potential judgment  
2 for two reasons. First, it claims that defendant Beeche  
3 Systems Corporation's (Beeche) parent, defendant The Fort  
4 Miller Group, Inc., (Fort Miller) "has disclaimed any  
5 liability or responsibility for Beeche's actions in  
6 connection with the project and will not contribute to any  
7 settlement and or judgment." (Robison's Reply p. 10).  
8 Nowhere does Robison state the factual basis for this claim  
9 or explain how Fort Miller might avoid any judgment entered  
10 against it since Fort Miller is a named defendant in  
11 Robison's state court suit. Second, Robison asserts that  
12 Beeche filed a bankruptcy proceeding in 1991. This  
13 information is contained in the declaration of Angela Zanin,  
14 counsel for Robison, who describes her role as including  
15 "research on the financial stability of the defendants."  
16 (Zanin Decl. para. 2). Nowhere is there any explanation as  
17 to why this information was not filed in support of its  
18 motion so that St. Paul would have had an opportunity to  
19 respond. Raising new factual material in the reply is  
20 disfavored and I have attached less weight to it. See Lujan  
21 v. National Wildlife Federation, 497 U.S. 871, 894-95 (1990);  
22 Judge William W. Schwarzer, et al., Federal Civil Procedure  
23 Before Trial, § 12:107 (Rutter Group 2004). Without more, the  
24 fact that one defendant filed for bankruptcy 14 years ago  
25 does not justify intervention.

26 Robison has cited no California authority in which a  
27 plaintiff has been allowed to intervene in a coverage dispute  
28 between the defendant and defendant's insurer. Nor has it

1 cited any persuasive reason why this should be permitted in a  
2 routine coverage dispute which lacks any of the special  
3 characteristics, such as a default or a bankruptcy, which  
4 have troubled the courts. On the contrary, what Robison  
5 seeks seems inconsistent with California's restrictions on  
6 direct actions against insurers. See Cal. Ins. Code § 11580.

7 Nor has Robison established that defendants cannot  
8 adequately protect its interests. Defendants are represented  
9 by a major law firm and appear to be actively defending this  
10 action.

11 Alternatively, Robison seeks to permissively intervene  
12 under Fed. R. Civ. Proc. 24(b). A court may exercise its  
13 discretionary power to permit intervention where there is a  
14 common question of law or fact between the movant's claim and  
15 the main action. See U.S. v. State of Wash., 86 F.3d 1499,  
16 1506-07 (9th Cir. 1996). Robison has failed to explain what  
17 common questions of law or fact exist to justify permissive  
18 intervention. Whatever commonality exists, it is only with  
19 respect to St. Paul's third claim, and not with respect to  
20 the lead rescission claims. I have denied defendants' motion  
21 to transfer and the action will stay in this Court. To the  
22 extent that Robison's interests are implicated, Robison is  
23 free to offer assistance to defendants and may be subpoenaed  
24 to provide witnesses and documents.

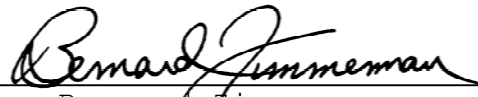
25 For the foregoing reasons, **IT IS ORDERED** that Robison's  
26 motion to intervene is **DENIED** without prejudice to being

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renewed if changing circumstances align this case with the cases that have permitted intervention.

Dated: November 10, 2005

A handwritten signature in black ink, appearing to read "Bernard Zimmerman", is written over a horizontal line.

Bernard Zimmerman  
United States Magistrate Judge

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